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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re K.O., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.O.,

Defendant and Appellant.

A147112

(Alameda County
Super. Ct. No. SJ1502413103)

Appellant K.O., a minor, was charged with carrying a concealed weapon (Pen. Code, § 25400, subd. (a)(2)) (count one), carrying a loaded firearm in a public place (Pen. Code, § 25850, subd. (a)) (count two), and unlawful possession of a firearm by a person previously adjudged a ward of the juvenile court for certain categories of crimes (Pen. Code, § 29820, subd. (b)) (count three). He entered into a plea bargain admitting guilt as to charge three, and in return, the People dismissed counts one and two. He now appeals, claiming the plea bargain was invalid because he could not lawfully be found guilty of count three. We agree and consequently remand to allow K.O. to withdraw the plea. Should he do so, counts one and two shall be reinstated.

I. BACKGROUND

Prior to being charged here, K.O. was charged with robbery (Pen. Code, § 211) on May 14, 2015 in a prior juvenile wardship proceeding (Welf. & Inst. Code, § 602,

subd. (a)). He admitted to a lesser included charge of attempted second degree robbery (Pen. Code, §§ 664, 212). After his admission, the juvenile court declared him a ward of the court and ordered that he be put on probation in out-of-home placement. When K.O. later requested that the disposition be reconsidered, he was released to his mother's care on GPS monitoring but soon violated the monitoring rules. The court then ordered that he be removed from his mother's care and held in juvenile hall. After less than three weeks in custody, he was released back into his mother's care and put on electronic monitoring.

In October of 2015, following his release from juvenile hall, Oakland police officers discovered K.O. carrying a loaded firearm, resulting in a new juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)), this time charging him with the three counts of possession of a firearm that we see here. As noted above, the Alameda County District Attorney offered a negotiated disposition in which K.O. would admit to count three, and counts one and two would be dismissed. He accepted these terms, admitted to count three on that basis, and the court committed him to foster home placement.

II. DISCUSSION

K.O. challenges the plea bargain on two grounds. First, he alleges it was invalid because there was no factual basis for his admission to a violation of Penal Code section 29820, and he cannot as a matter of law be found to have violated that section. Second, even if the declaration of wardship is valid, he claims the trial court failed to state whether the Penal Code section 29820 violation was a felony or a misdemeanor, and thus the case must be remanded so the trial court can make such a declaration. (Welf. & Inst. Code, § 702.)

A. K.O.'s Plea Admission was Invalid

The People agree with K.O.'s contention that his admission to violating Penal Code section 29820, subdivision (b) was invalid. We agree as well. Penal Code section 29820, subdivisions (a) through (b) prohibits the possession of firearms by individuals who have been adjudged wards of the court only for specific offenses enumerated in the statute. Attempted robbery is not one of those offenses. (Pen. Code, § 29820,

subd. (a)(2).) Because K.O. was adjudicated a ward of the court for committing an attempted robbery, he did not violate Penal Code section 29820, and therefore his admission of guilt to the violation of that statute is invalid.¹

B. The Appropriate Remedy is to Allow K.O. to Withdraw the Plea, and to Reinstate the Charges

To cure the defect in the plea, K.O. suggests the appropriate remedy is to remand so that he has the opportunity to withdraw it. While the People agree with K.O.'s proposed remedy, they also request we order the trial court to reinstate the dropped charges if K.O. elects to withdraw his plea. We agree with that point too.

It is well established that negotiated plea bargains are considered to be contracts and shall be interpreted accordingly. (*People v. Shelton* (2006) 37 Cal.4th 759, 767.) A plea bargain must confer reciprocal benefits on both parties, and the state generally considers the defendant's vulnerability to a term of punishment to be an integral element of the bargaining process. (*People v. Collins* (1978) 21 Cal.3d 208, 214–215.) When a plea bargain cannot be specifically enforced, the appropriate remedy is to allow the defendant to withdraw the plea and stand trial for the original charges, thus preserving the spirit of the bargain. (*In re Jermaine B.* (1999) 69 Cal.App.4th 634, 639.) Voiding the benefit conferred on one party requires the voiding of the benefit conferred on the other.

Even though K.O. appeals the validity of the plea bargain, he still contemplates that he may wish to keep the bargain after being fully informed, by counsel, of the consequences of the withdrawing the plea. K.O. is entitled to preserve the plea bargain if he so chooses despite the fact that he has successfully argued to this court that the plea is invalid. A guilty plea to a lesser offense that is reasonably related to one of a defendant's charged offenses would create an enforceable plea bargain. (*People v. West* (1970) 3 Cal.3d 595, 612–613.) Here, the Penal Code section 29820 violation is reasonably related to the other two possession offenses with which K.O. was charged.

If K.O. chooses to withdraw the plea, however, the charges that the People dropped in negotiating the plea bargain must be reinstated. We cannot return this case to

¹ Because we hold that K.O.'s plea is invalid, his second claim is moot.

the trial court without exposing K.O. once again to punishment on the original charges, and K.O. cannot choose to be relieved of his sentence while leaving the plea bargain intact. (*People v. Collins, supra*, 21 Cal.3d at pp. 214–215.) If we remand solely to give K.O. the ability to withdraw the plea and fail to reinstate the charges should he choose to do so, then we put him in a position where he could make himself invulnerable to punishment on the original charges. (*Ibid.*)

Accordingly, the appropriate remedy here is to allow K.O. the opportunity to withdraw his plea, and if he chooses to do so, then the dropped charges shall be reinstated.

III. DISPOSITION

We reverse and remand for further proceedings as outlined in this opinion.

Streeter, J.

We concur:

Ruvolo, P.J.

Reardon, J.

A147112/*In re K.O.*